LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JAN 12 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 784

DORIS WATKINS, *et al.*,

Petitioners,

—v.—

THE SUPERIOR COURT, LOS ANGELES COUNTY, CALIFORNIA, *et al.*

PETITIONERS' REPLY TO BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

JACK GREENBERG
LEROY D. CLARK
CHARLES STEPHEN RALSTON
10 Columbus Circle
New York, New York 10019

RAYMOND L. JOHNSON
4840 W. Washington Blvd.
Los Angeles, California

HERMAN T. SMITH
600 East 103rd Street
Los Angeles, California

ANTHONY G. AMSTERDAM
3400 Chestnut Street
Philadelphia, Pennsylvania

Attorneys for Petitioners

INDEX

PAGE

I. Respondents For The First Time Pose An Issue Of Fact, Demonstrating The Necessity For A Hearing In The Court Below 1

II. Substantial Federal Questions Were Squarely Presented To The Courts Of The State Of California .. 2

AUTHORITY

Boone, Prohibition: Use of The Writ of Restraint in California, 15 Hastings L.J. 161 (1963) 3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 784

DORIS WATKINS, *et al.*,

Petitioners,

—v.—

THE SUPERIOR COURT, LOS ANGELES COUNTY, CALIFORNIA, *et al.*

PETITIONERS' REPLY TO BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

I.

Respondents For The First Time Pose An Issue Of Fact, Demonstrating The Necessity For A Hearing In The Court Below.

Respondents for the first time in any court have responded to the substantial issues raised by petitioners by a Brief in Opposition to Writ of Certiorari. No other party, nor any California court, has denied or demurred to any of petitioners' allegations heretofore. One part of this response creates an issue of fact. Affidavits by members of the Los Angeles Public Defender's Office dispute the petitioners' factual allegations. But this Court is not a *nisi*

prius tribunal for resolution of factual issues. This Court therefore should grant the petition for certiorari and remand to the California courts for a full evidentiary hearing on the allegations of the petitions filed in those courts.[1]

II.

Substantial Federal Questions Were Squarely Presented To The Courts Of The State Of California.

Apart from presenting their contradictory version of the facts, respondents make a number of legal assertions. First, they argue that petitioners presented no federal question to the courts of the State of California (Brief in Opposition, p. 2), but this is transparently not the case, as the Petition for Writ of Certiorari indicates. (See pages 7-8, 10-11.)

Second, respondents argue that in a number of respects petitioners did not comply with California procedure. (Brief in Opposition, Parts II, III.) This assertion is con-

---

[1] Moreover, many of the facts set out in the affidavits in Respondents' opposition tend to support petitioners' claim that adequate counsel has not been provided. They establish that: the normal weekly case load per public defender was increased 50% to 75% (Appendix, p. 7); there is only *one* attorney assigned to criminal appeals (App., p. 1); the Los Angeles County office took over the misdemeanor jurisdiction previously handled by the City office and only ten of a possible forty-four authorized positions had been filled at the time cases began coming to trial (App., p. 2); only five attorneys are assigned to "the Psychiatric and Juvenile Courts" (App., p. 1), although some 534 juveniles were arrested, detained, and disposed of over a period of five to six weeks (see Petition for Writ of Certiorari, p. 20, n. 6). Respondents give no statement of the case load per deputy for juvenile or misdemeanor defendants. The serious questions of fact thus left unanswered even by the Respondents' affidavits require a full evidentiary hearing.

spicuously bare of authority. No such defense was presented to the California courts, and the California courts made no such ruling. On the contrary, as the authorities set forth in the Petition for Writ of Certiorari at pages 14 to 15 indicate, the procedure employed by petitioners was apt. (See, Boone, *Prohibition: Use of The Writ of Restraint in California,* 15 Hastings L. J. 161 (1963).)

Indeed, apart from their technical correctness, the writs of prohibition and mandamus are peculiarly appropriate in dealing with a widespread denial of constitutional rights as was here alleged. The type of relief requested seems suited to avoid problems of retroactivity and anxieties over possible releases from jail of large numbers of defendants which could arise when prosecutions are concluded and only post-conviction relief can be awarded. As a matter of sound policy it would seem better to issue an order granting anticipatory relief, rather than to seek to unravel a conviction that was thought to be settled.

It would be an anomaly if it were held that this otherwise appropriate remedy was unavailable, i.e., that the cases are moot, because of California's unilateral action of ignoring the petitioners' allegations while moving ahead with pending prosecutions. However, this result need not obtain, since respondents admit the propriety in the present proceeding of setting aside petitioners' convictions and the granting of new trials (Brief in Opposition, p. 4).

Petitioners therefore submit that the appropriate disposition of this cause would be for this Court to grant a petition for writ of certiorari, to vacate the judgment below, and to

remand for a hearing on their allegations, which have been challenged for the first time in this Court.

Respectfully submitted,

JACK GREENBERG
LEROY D. CLARK
CHARLES STEPHEN RALSTON
10 Columbus Circle
New York, New York 10019

RAYMOND L. JOHNSON
4840 W. Washington Blvd.
Los Angeles, California

HERMAN T. SMITH
600 East 103rd Street
Los Angeles, California

ANTHONY G. AMSTERDAM
3400 Chestnut Street
Philadelphia, Pennsylvania
Attorneys for Petitioners